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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/667,680  
Filing Date: September 22, 2003  
Appellant(s): HOGAN, KAREN

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George P. Bonanto  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed on 1-14-2008 and supplemental appeal briefs filed on 2-25-2008 and 6-12-2008 appealing from the Office action mailed 7-16-2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

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2,778,847	Taunton	11-2006
6,212,712	Logan, Jr. et al	11-2006

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claim language “protuberances are sufficiently rigid to at least one of deform and penetrate an external surface of the meat or other selected food item”.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by

**Taunton (US Patent 2,778,173).**

Taunton teaches a method and apparatus of producing airtight packages. The device of Taunton includes a plurality of projections which broadly read on a mechanical

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tenderizing surface disposed therewithin the package. Taunton teaches edges 4 and 5 sealed along edges 6 and 7 in any suitable way to form a bag or pouch. Regarding claims 2 and 3, the bag of Taunton is non-porous plastic and is reversible. As for claims 9-11, the tenderizing surface of Taunton is integrally formed with said bag and includes pyramidal-shaped teeth disposed on at least one inner surface of said bag.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5, 7, 8, 19, 21, 22, 23 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Taunton (US Patent 2,778,178) in view of Logan, Jr. 6,212,716).**

Taunton does not specifically discuss the type of closure means for the bag or pouch. Logan teaches a Zip-loc bag and closure for releasably sealing a bag. Regarding the claims, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide the closure means of Taunton with a conventional Zip-loc closure means, in view of the teachings of Logan, Jr. in order to releasably close the bag. Further, a Zip-loc closure is believed to be a hermetically sealed closure. Regarding claim 28, it is well known in the art to one of ordinary skill in the art at the time the invention was made to use one's hand to hit a food item for purpose of tenderizing the food item.

Claim 14, 15-18, 20, 21, 24-26 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Taunton (US Patent 2,778,178)**. Taunton teaches a method and apparatus of producing airtight packages. The device of Taunton includes a plurality of projections which broadly read on a mechanical tenderizing surface disposed therewithin the package. Taunton teaches edges 4 and 5 sealed along edges 6 and 7 in any suitable way to form a bag or pouch. Regarding claims 2 and 3, the bag of Taunton is non-porous plastic and is reversible. As for claims 9-11, the tenderizing surface of Taunton is integrally formed with said bag and includes pyramidal-shaped teeth disposed on at least one inner surface of said bag.

Taunton does not discuss the use of a drain spout attached to the bag. However, in regards to claims 14 and 24, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide the bag of Taunton with a drainage spout, in that, it allows a user to remove unwanted liquids from the interior of the bag without opening the bag completely. In regards to claim 15, it is notoriously well-known in the art to place food items in a marinade bag and to tenderize the food items by hitting the bag to one of ordinary skill in the art at the time the invention was made.

#### **(10) Response to Argument**

The Applicant argues that "Taunton fails to teach at least a plurality of protuberance, as claimed" is noted. The independent claims mere claim a plurality of protuberances and no structural details of said protuberances are set forth or claimed.

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The reference to Taunton clearly shows a plurality of protuberances, whose shape(s) are similar to the shapes as disclosed by Applicant. Further, it should be noted, the protuberances as claimed by the Applicant do not inherently tenderize meat, but need a person or object to strike them in order to be compressed into the food item. The Applicant further argues that the reference to Taunton "fails to teach any structure capable of tenderizing meat or other selected food item. The additionally argues that the reference to Taunton "fails to teach any methodology of tenderizing same". In response to Applicant's argument, a recitation of the intended use of the claimed must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The Applicant provides additional functional use scenarios in which the device of Taunton purported will not work. However, these examples are specific in nature, wherein the Applicant's claimed are broad in nature, and given the similarities of the claimed device with the patented device, one could say given the reasoning presented, that the Applicant's device does not or could not work either.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Thomas Price/

Primary Examiner, Art Unit 3643

Conferees:

/Thomas Price/

/Robert P. Swiatek/

/Jack Keith/